HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

Coram : Hon'ble Shri H. L. Dattu, C.J. and
Hon'ble Shri Dilip Raosaheb Deshmukh, J.

W.P.No. 98 of 2003

Petitioner

Dr. Suraj Agrawal @ S.K. Agrawal, Aged about 55 years, son of late Sri Sadhoo Ram Agrawal, Professor Pharmacology, posted at Pt. J.N.M. Medical College, Raipur, Resident of HIG C/72, Shailendra Nagar, City, Tahsil & District Raipur, Chhattisgarh.

versus

Respondents

1. State of Chhattisgarh, Through Secretary Department of Health & Public Welfare, DKS Bhawan Mantralay, Raipur, Chhattisgarh.
2. Director, Medical Education, Bhopal Now Director Medical Education, Raipur Chhattisgarh.
3. State of Madhya Pradesh, Through Department of Health & Family Welfare.
4. The Dean, PT. J.N.M. Medical College, Raipur, Chhattisgarh.
5. M.P.State Administrative Tribunal, Through its Registrar, Raipur, Chhattisgarh.

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR THE ISSUANCE OF APPROPRIATE WRIT / WRITS, ORDERS, DIRECTION ETC.

W.P.No. 1182 of 2002

Petitioner

Dr. G.B. Gupta, Professor of Medicine, S/o Shri R.S.Gupta, Aged about 51 years, Medical College, Raipur, R/o Shailendra Nagar, Raipur

Versus

Respondents

1. M.P.State Administrative Tribunal, Through Raipur Bench.
2. The State of M.P. Through Chief Secretary, Vallabha Bhawan, Bhopal.
3. The Director, Medical Education, Bhopal (MP)
4. Dean, Pandit Jawaharlal Nehru, Medical College, Raipur (C.G.)
5. State of Chhattisgarh, Through Secretary (Health) DKS Bhawan Raipur.

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR GRANT OF MANDAMUS, CERTIORARI OR DIRECTION OF LIKE NATURE.

Present:

Shri Manindra Shrivastava, Sr. Advocate with Shri Devendra Patel, counsel for the petitioner in W.P.No. 98 of 2003.
Shri N.K. Vyas, counsel for the petitioner in W.P.No.1182 of 2002.
Shri Rajeev Shrivastava with Shri Indrasen Sahu, counsel for respondents No. 2 & 3 in W.P.No. 1182 of 2002.
Shri G.D.Vaswani, Government Advocate for the State in both writ petitions.

ORAL ORDER
(Passed on 07th May, 2007)

The following oral order of the Court was passed by **H.L.Dattu, C.J.**

Since a common question of fact and law is involved in the aforesaid writ petitions, they are clubbed together, heard and disposed of by this common order.

2. The Director of Medical Education had issued an advertisement dated 22nd September 1976 for the purpose of making emergency appointments to the post of lecturers in medical colleges of Madhya Pradesh.

3. Pursuant to the aforesaid advertisement, the petitioners in these writ petitions had applied and they were also selected for the post of lecturers in different faculties by the respondent – Director, Medical Education. The letter of appointment, that was issued to the petitioners, clearly indicate that the appointment was purely temporary for a period of six months or in the alternative till regular selections are made by the State Public Service Commission. The initial appointment that was made for a period of six months was continued from time to time for a further period of four years by issuing separate letters of appointment.

4. For the first time, the petitioners were selected by the Public Service Commission and appointed by the State Government to the substantive posts of lecturer in different faculties on 16.06.1982.

5. Since the period of service between 20.01.1977 till 16.06.1982 was not counted for the purpose of calculating the seniority of the petitioners, they had approached the Tribunal in O.A.No.1093 of 1991. The Tribunal by its order dated 08.04.2002 had rejected the application, that is how, the petitioners are before us in these petitions filed under Article 227 of Constitution of India.

6. Shri Manindra Shrivastava, learned Sr. Advocate and Shri N.K.Vyas, learned counsel appearing for the petitioners would contend that since the appointment of the petitioners was made by the State Government and was regularized on a later date by the Public Service Commission, their period of service between 20.01.1977 till 16.6.1982 requires to be counted for the purpose of calculating the seniority of the petitioners. In support of that contention, learned Sr. Advocate relies upon the observation made by the Apex Court in the case of ***Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others,* (1990) 2 SCC 715** and the also the decision of the Apex Court in the case of ***Dr. A. K. Jain and others v. Union of India and others,* 1987 (Supp) SCC 497.**

7. *Per contra,* learned counsel appearing for the respondents would justify the orders passed by the Tribunal.

8. The one and only question that arises for our consideration in these petitions is that whether the Tribunal was justified in rejecting the request made by the petitioners in O.A.No. 1093 of 1991.

9. The facts are not in dispute, in the sense that the initial appointment of the petitioners was done by the State Government pursuant to an advertisement issued on 22.09.1976. The appointment that was made pursuant to the advertisement was an emergency appointment in the sense the appointment was only for a period of six months or in the alternative till regular selections are made by the Public Service Commission.

10. The Madhya Pradesh Health Service Recruitment Rules, 1967 (for short 'the Rules, 1967') define the meaning of expression of "Appointing Authority", "Commission" etc.

11. Rule 2(a) of the Rules, 1967 speaks of "Appointing Authority" means the Government of Madhya Pradesh, in the Public Health Department. Rule 2(b) speaks of "Commission" to mean the Madhya Pradesh Public Service Commission. Rule 11 of the Rules, 1967 provides for Direct Recruitment of selection for recruitment to the service under the Health Department. The Rules specifically state that it is the State Public Service Commission which would make selections for appointment in the Health Department. The Appointing Authority after such selection is the State Government.

12. In the instant case, as we have already noticed, the appointment of the petitioners was made by the State Government but those appointments were called emergency appointments. For the first time, they were selected and appointed under the Rules only on 16.06.1982 by the State Government.

13. Keeping this factual matrix in view, we apply the principles laid by the Apex Court in ***Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others*** (supra). The period of service between 20.01.1977 till 16.06.1982 cannot be counted for the purpose of counting the seniority of the petitioners in the Health Department. However, Shri Manindra

Shrivastava, learned Sr. Advocate would submit that clause (B) of paragraph 47 of the said decision would apply to the facts and circumstances of the present case. To appreciate the stand of learned Sr. Advocate, we extract the said clause (B) and then explain what is the purport of the said clause. The said clause (B) reads as under:

> "(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted."

14. An analysis of the aforesaid clause would indicate the following:

First and foremost, the initial appointment, if it is not made as provided in the Rules, but the appointee continues in the post without any interruption, on a later date the Appointing Authority shall regularize his services, as required under the Rules, then the period of officiating service will be counted.

15. In the present case, the initial appointment was not made in accordance with the Rules. It was made by the State Government to meet out certain emergency ~~creations~~ situations. Since the initial appointment was not made by a person who was authorized to do so under the Rules, 1967, even if the same was regularized on a later date, the petitioners cannot be taking benefit of clause (B) of paragraph 47 of the decision rendered in ***Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others*** (supra).

16. Shri Manindra Shrivastava, learned Sr. Advocate also relies on the decision of the Apex Court in ***Dr. A. K. Jain and others v. Union of India and others*** (supra). That was the case where Adhoc appointments were made by the Railways and those appointments for a period of six months and they were continued from time to time for a period of four years. On a later

date, their appointments were cancelled on various grounds. When the matter reached the Supreme Court, the Supreme Court in exercise of its powers under Article 142 of the Constitution of India observed that adhoc appointments made between 1984 till regular selections are made, their services can also be regularized. In our opinion, the said decision on which reliance is placed would not come to aid the contentions of learned counsel appearing for the petitioners. In that view of the matter, in our opinion, the Tribunal was justified in rejecting the application filed by the petitioners. Accordingly, the following:

ORDER

i) Both the writ petitions are rejected.

ii) In the facts and circumstances of the case, the parties are directed to bear their own costs in both the petitions.

iii) Ordered accordingly.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge